lected from the Midstate Horticultural Company, Inc.

The last paragraph of each count is identical in every respect with the exception of the amount of the rebate and the California point of origin of the shipment. The last paragraph of Count 1 (R. 3) is here quoted:

> That thereafter on, to-wit, May 15, 1935, said defendant, The Pennsylvania Railroad Company, unlawfully did knowingly offer, grant, and give, and cause to be offered, granted, and given to said Midstate a rebate and concession in the amount of, to-wit, $282.24, in respect to the aforesaid transportation of said shipment of property by said common carriers, whereby said property was transported from said Quality, through the Eastern District of Pennsylvania and within the jurisdiction of this Court, to Manhattan Produce Yards aforesaid at a less rate and charge than that named and provided in the schedules and tariffs of said common carriers published and filed as aforesaid; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

The rebates and concessions charged by the several counts of the indictment total $10,391.16.

In a bill of particulars ordered by the court, the Government stated (R. 25):

> (1. Question.) Where was the crime committed?

1. Answer. It is assumed that defendants desire to know where the check by which payment of all rebates alleged in the 26 counts of the indictment was handed by a representative of the Pennsylvania Railroad Company to a representative of the Midstate Horticultural Company, Inc., and therefore states that the check in payment of all the rebates alleged in the said 26 counts of the indictment was given by a representative of the said Railroad Company to A. Setrakian, Vice-President, Secretary, and General Manager of the Midstate Horticultural Company in the City of New York, State of New York. All of which was stated at the bar of the Court by Francis Biddle, Esquire, Counsel for the Pennsylvania Railroad Company.

The defendants demurred to the indictment (R. 26) upon the ground, among others, that (R. 26):

3. The indictment does not allege any facts which give this court jurisdiction over defendant in this matter; in that it is alleged in Counts 1 to 26, inclusive, of the indictment that on May 15, 1935, defendant did knowingly offer, grant, and give, and cause to be offered, granted, and given, to the Midstate Horticultural Company, Inc., certain rebates in respect to the transportation of certain shipments, but it is not stated in the indictment that the payment of the rebate was made within the jurisdiction of this court, or in what jurisdiction the payment was made, and it further appears in all of

> the Counts of the indictment that the transportation of the various shipments had terminated more than two years prior to the date of payment of the alleged rebate.

The District Court sustained the demurrer (R. 28), its opinion (R. 27, 28) concluding:

> If any violation of the law occurred as alleged, the case should be tried in New York. The Court is of the opinion that under all of the facts, jurisdiction is not in this Court * * *.

SPECIFICATION OF ERRORS TO BE URGED

The District Court erred:

1. In sustaining the demurrer to the indictment.

2. In holding and adjudging that jurisdiction of the offenses charged in the indictment does not lie in the District Court of the United States for the Eastern District of Pennsylvania.

3. In failing to construe Section 1 of the Elkins Act, the statute upon which the indictment is founded, as fixing jurisdiction of the offenses charged in the indictment in the District Court of the United States for the Eastern District of Pennsylvania.

4. In holding and adjudging that jurisdiction of the offenses charged in the indictment lies solely in the District Court of the United States for the Southern District of New York.

DISCUSSION

As this case presents the identical question which is involved in the case of *United States of America, Appellant,* v. *Midstate Horticultural Company, Inc., and Arpaxat Setrakian,* No. 286, which will be argued concurrently with the present case, the Court is respectfully referred to the Government's brief in the *Midstate* case for a discussion of the Government's contentions.

CONCLUSION

For the reasons stated in the Government's brief in the *Midstate* case, it is respectfully submitted that the judgment of the court below sustaining the demurrer to the indictment in the instant case should be reversed.

ROBERT H. JACKSON,
Solicitor General.
THURMAN ARNOLD,
Assistant Attorney General.
WENDELL BERGE,
ELMER B. COLLINS,
FRANK COLEMAN,
Special Assistants to the Attorney General.
DWIGHT H. WILLIAMS,
Attorney, Interstate Commerce Commission.

DECEMBER 1938.

U. S. GOVERNMENT PRINTING OFFICE: 1938